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13 IN THE UNITED STATES COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 MACK WARD and WILLIAM E.
16 SIDWELL, on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

19 FLUOR ENTERPRISES, INC.,

20 Defendant.
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Case No. 8:11-cv-00467-DOC -VBK
**ORDER: (1) PROVISIONALLY
CERTIFYING CLASS AND
COLLECTIVE ACTION; (2)
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (3) APPROVING
CLASS NOTICE AND MANNER OF
DISTRIBUTION; AND (4) SETTING
FINAL APPROVAL AND FAIRNESS
HEARING**

Date: January 30, 2012

Time: 8:30 am

Judge: Honorable David O. Carter

Courtroom: 9D
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1 Plaintiffs' Unopposed Motion for Conditional Certification and Preliminary
2 Approval of a Class and Collective Action Settlement came before this Court, Chief
3 Judge David O. Carter presiding, on January 30, 2012. The Court, having
4 considered the papers submitted in support of the motion of the parties, HEREBY
5 ORDERS THE FOLLOWING:

6 **CONDITIONAL CERTIFICATION OF THE CALIFORNIA CLASS AND**
7 **FLSA CLASS**

- 8 1. Plaintiffs' Motion for Conditional and Collective Action Certification is
9 granted.
- 10 2. Pursuant to 29 U.S.C. §216(b), a collective action may be maintained by
11 an employee or employees on behalf of others who are "similarly
12 situated." The Court finds and concludes that named plaintiffs are
13 "similarly situated" to the other FLSA Class Members, and on that basis
14 conditionally certifies the FLSA collective action for purposes of
15 settlement only and authorizes notice as set forth herein. This FLSA
16 Class consists of all Project Controls Employees who worked for
17 Defendant in locations outside California between February 25, 2008 to
18 December 31, 2011, and who are not members of the California Class.
- 19 3. Pursuant to Fed. R. Civ. P. 23, the Court conditionally certifies the
20 following class for purposes of settlement only: a California Class
21 consisting of all Project Controls Employees who worked for Defendant
22 in California between September 27, 2006 to December 31, 2011.
- 23 4. In conditionally certifying the California Class and the FLSA Class, the
24 Court finds and concludes as follows. Each settlement class is sufficiently
25 numerous that joinder would be impractical. The members of the
26 settlement classes share common questions of law and fact, including: (1)
27 whether the identified partial day deductions constitute a pattern or
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1 practice evidencing an intent not to pay PCEs on a salary basis; (2)
2 whether the salary basis requirement of the FLSA and California law
3 allows employers to make partial day deductions from an employee's
4 weekly pay so long as the employee is guaranteed a biweekly paycheck
5 equal to 1/26th of his or her annual salary; (3) whether Fluor's written
6 policies justify application of any known good faith defense to liquidated
7 damages; and (4) and whether the "window of correction" defense is
8 available to Fluor based on the facts of this case.

- 9 5. Because certification of the classes is proposed in the context of a
10 settlement, the Court need not inquire whether the case, if tried as a class
11 action, would present intractable management problems.
- 12 6. Plaintiff William Sidwell is appointed as Class Representative of the
13 California Class. Plaintiffs William Sidwell and Mack Ward are
14 appointed as Class Representatives Of the FLSA Class. The Court finds
15 and concludes that there is a commonality of interest between the named
16 Plaintiffs and the members of their respective settlement classes; and that
17 the named Plaintiffs' claims are typical of the claims of absent members
18 of their respective settlement classes.
- 19 7. Pursuant to Fed. R. Civ. P. 23(g), the Court finds and concludes that
20 Plaintiffs' law firms of Shapiro Haber & Urmy LLP and Rukin Hyland
21 Doria & Tindall LLP, separately and collectively, have extensive
22 experience and expertise in litigating complex employment class and
23 collective actions. Because these law firms and each of them meet all of
24 the standard set forth in Rule 23(g)(1)(A), these law firms are hereby
25 appointed settlement Class Counsel.
- 26 8. The Court hereby conditionally certifies, for purposes of settlement, the
27 California Class pursuant to Fed. R. Civ. P. 23(b)(3) and the FLSA Class
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1 pursuant to 29 U.S.C. §216(b).

2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 9. The Court grants preliminary approval of the Settlement, as set forth in
4 the Settlement Agreement filed by the parties. The Settlement appears to
5 have been the product of serious, informed, and extensive arm's-length
6 negotiations between the Parties and is well within the range of possible
7 final approval—that is, it appears at this stage to be fair, adequate, and
8 reasonable to the Class.

9 **APPOINTMENT OF CLAIMS ADMINISTRATOR**

10 10. Rust Consulting, Inc. is appointed as the Claims Administrator subject to
11 the terms and conditions of the parties' Agreement, and shall perform all
12 duties and responsibilities of the Claims Administrator as set forth in that
13 Agreement.

14 **APPROVAL OF CLASS NOTICE**

- 15 1. The Court approves, as to form and content, the Notice of Class Action
16 Settlement for both the California and FLSA Classes ("Notice"), in
17 substantially the form attached to the Settlement Agreement as Exhibits A
18 and B. The Court also approves, as to form and content, the "Claim Form
19 For Members of Only the FLSA Class" and the "Claim Form For
20 Members of the California Class," in substantially the form attached to
21 the Settlement Agreement as Exhibits C and D.
- 22 2. The Court approves the procedure for Class Members to participate in, to
23 opt out of, and to object to the Settlement as set forth in the Notice.
- 24 3. The Court directs the mailing of the Notice and Claim Form by first-class
25 mail to the Class Members in accordance with the implementation
26 schedule set forth in the Settlement Agreement and described below. The
27 Court finds the content and process for providing notice to the Class as set
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1 forth in the Settlement fulfills the requirements of Federal Rule of Civil
 2 Procedure 23(c)(2)(A) and due process, provides the best notice
 3 practicable under the circumstances, and shall constitute due and
 4 sufficient notice to all Class Members.

5 **FINAL APPROVAL HEARING**

6 4. The Court hereby sets a hearing (“Final Approval Hearing”) to take place
 7 on June 25, 2012, at 11:00 am, in Courtroom 9D of the United States
 8 District Court for the Central district of California. At the Final Approval
 9 Hearing, the Court will consider: whether to give final approval to the
 10 settlement as fair, reasonable, and adequate to the Settlement Class;
 11 whether to enter final judgment in this case; whether to approve the
 12 incentive payments as set forth in the Settlement Agreement; whether to
 13 award attorneys’ fees and costs to Class Counsel, and if so, in what
 14 amount; and any other matters as the Court should deem necessary.

15 **IMPLEMENTATION SCHEDULE**

16 Deadline for Defendant to provide Claims 17 Administrator with Class Member Data	15 calendar days after Order Granting Preliminary Approval
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19 Deadline for Claims Administrator to Mail 20 the Notice and the Claim Form to Class 21 Members	25 calendar days after Order Granting Preliminary Approval
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23 Deadline for Class Members to Submit 24 Claim Forms	60 calendar days after mailing of the Notice
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26 Deadline for Class Members to Postmark 27 Requests for Exclusions	60 calendar days after mailing of the Notice
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29 Deadline for Postmarks of Any Objections to 30 Settlement	60 calendar days after mailing of the Notice

1 Deadline for Class Counsel to file Motion for May 10, 2012
2 Final Approval of Settlement

3 Deadline for Plaintiffs' Counsel to File
4 Petition For Attorneys' Fees, Costs, and
5 Service Awards

6 Deadline for Postmark of Any Objections to 10 Days after Filing of
7 Request for Attorneys' Fees and Costs Motion for Attorneys'
8 Fees & Costs

9 Final Fairness Hearing and Final Approval June 25, 2012

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11 IT IS SO ORDERED.

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14 Date: January 30, 2012



15 THE HONORABLE DAVID O.
16 CARTER
17 United States District Judge
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